

REMARKS

This Amendment is responsive to the non-final Office Action¹ of September 5, 2007. Claims 1, 3, 5-10, 13-18, and 22-32 were presented for examination. All claims were rejected as detailed below. Claims 1, 10, 18 and 28 are independent claims. Claims 1, 10 and 18 are amended herein. Support for the amendments can be found in the application, as filed. Claims 2, 4, 11, 12, 19-21 and 33 were previously canceled without prejudice or disclaimer. No claims are added. Claims 1, 3, 5-10, 13-18 and 22-32 are pending.

The Rejections:

Claims 1, 3, 5, 6-9, 28 and 30-32 are rejected under 35 U.S.C. §103(a) as being un-patentable over Farris et al., U.S. Patent No. 5,751,789 (referred to hereinafter as “Farris”) in view of newly-cited Ochi et al., U.S. Patent Application Publication No. 2004/0033779 (referred to hereinafter as “Ochi”).

Claim 6 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Ochi and well known Prior Art (MPEP 2144.05).

¹ The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

Claim 7 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Ochi and Ehreth U.S. Patent No. 6,246,750 B1 (referred to hereinafter as “Ehreth”).

Claim 8 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Ochi and McKenna et al. U.S. Patent No. 6,829,486 B2 (referred to hereinafter as “McKenna”).

Claims 10, 13, 15, 17, 18 and 22-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina et al., U.S. 2004/0214569 A1 (referred to hereinafter as “Cardina”) in view of Ochi and Sendrowicz U.S. 2003/0134598 A1 (referred to hereinafter as “Sendrowicz”).

Claims 14 and 16 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Ochi, Sendrowicz and Sawada, U.S. 2005/0148315 A1 (referred to hereinafter as “Sawada”).

Claim 27 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Ochi, Sendrowicz and McKenna.

Claim 29 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Ochi and Patron et al., (U.S. 2005/0063333 A1) (referred to hereinafter as “Patron”).

Applicant respectfully traverses these rejections because the cited references taken individually or in any reasonable combination do not disclose or suggest all claim limitations of each pending claim for the following reasons.

Independent Claim 1:

Consider, first, independent claim 1 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in view of Ochi. Claim 1 recites, *inter alia*: “wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to the wireline network, said other wireless transceivers having been wireline-connected to the wireline network during normal operation.”

On page 3 of the Office Action, the Examiner states that Farris “does not particularly disclose wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to a [] network.” (blank inserted) This is an incomplete statement because it ignores “wireline” which should have appeared in the blank. However, Applicant agrees with that statement as far as it goes. Further, Applicant re-aligns the record by stating that Farris actually fails² to disclose this complete limitation.

Thereafter, the Office Action states: “Ochi teaches a wireless transceiver configured to relay data from other wireless transceivers that have lost connectivity to a [] network” (blank inserted) and, by that statement, has again omitted, “wireline” which modifies “network” in the limitation represented by that statement. Notably, in two prior office actions by the same Examiner that claim element was treated in its entirety.³ The Examiner then relies upon Ochi, Fig. 1 and paragraphs [0017], [0039] and

² In prior Office Actions dated 11/03/2006 (pg 4) and 05/04/2006 (pg 3) the Examiner stated far more strongly that “Farris fails to disclose” (emphasis added) this complete limitation, and Applicant continues to agree with that statement as well.

³ In prior Office Actions dated 11/03/2006 (pg 4) and 05/04/2006 (pg 3) the full limitation including “wireline network” was addressed, but not so in the instant Office Action.

[0040] to allegedly teach this limitation, but they do not. Applicant disagrees because user node 102, appearing in Fig. 1 of Ochi and as described in these paragraphs and throughout Ochi, relies exclusively upon a wireless connection. In fact, the term "wireline" does not appear in Ochi.

In further detail, consider Fig. 1 in Ochi which shows user node 102 in wireless communication with relay node 106 which, in turn, is networked with corresponding node 104. Paragraphs [0017], [0039] and [0040] are reproduced below.

[0017] Because the relay node is constantly connected to the corresponding node, when the communication link between the user node and the corresponding node is disconnected, the relay node acts as proxy for the user node to communicate with the corresponding node, hence service provision and requests between the user node and the corresponding node can be performed smoothly.

[0039] The communication system shown in FIG. 1 includes a user node 102, a corresponding node 104, and a relay node 106 able to communicate with the corresponding node 104 as proxy for the user node 102. For example, the user node 102 may be a mobile terminal, such as a cellular phone, and the relay node 106 may be a communication terminal such as a personal computer. Certainly, the user node 102 may also be a personal computer, or other fixed communication terminals. (emphasis added)

[0040] The user node 102 and the relay node 106 can communicate with each other through a number of communication links. Here, the communication links may be links used in a cellular communication system, or a personal handyphone system (PHS), or a wireless LAN (Local Area Network) such as IEEE 802.11a/b/g, or any other communication systems. In this embodiment, it is assumed that the communication link is a radio communication link. (emphasis added)

These three paragraphs, taken together, disclose or suggest that user node 102 is a mobile terminal, such as a cellular telephone, or can be a personal computer or other fixed communication terminal such as a non-mobile (fixed) radio communication link. Ochi addresses a problem not only of mobile cellular phones, but also of fixed wireless

links such as a radio link: "In the related art, methods involving Web servers or mobile file servers are used to overcome difficulties in an unstable communication system utilizing such a non-constantly connected link, such as a radio link." (Ochi, paragraph [0007]) Thus, a radio link is a fixed wireless link and is also addressed by Ochi.

In the Office Action's application of Ochi to this limitation of claim 1, it is viewing Ochi's relay node 106 as being equivalent to Applicant's recited "wireless transceiver" which is "configured to relay data from other wireless transceivers." It is viewing Ochi's user node 102 as one of Applicant's recited "other wireless transceivers that have lost connectivity to the wireline network" although it has omitted "wireline" in its analysis. Applicant submits that Ochi does not read on "other wireless transceivers that have lost connectivity to the wireline network" because it does not disclose wireline connections between those purported other wireless transceivers and the wireline network. Rather, it shows only wireless connections for user node 102 throughout its disclosure.

Nevertheless, Applicant has amended claim 1 to further clarify its patentability with respect to Ochi, by adding with respect to the other wireless transceivers that have lost connectivity to the wireline network the phrase: "said other wireless transceivers having been wireline-connected to the wireline network during normal operation." There is no disclosure in Ochi of node 102 ever having been wireline-connected to corresponding node 104 or to network 108. Therefore, Ochi does not disclose or suggest: "wherein the wireless transceiver is configured to relay data from other wireless transceivers that have lost connectivity to the wireline network, said other wireless

transceivers having been wireline-connected to the wireline network during normal operation” as recited in claim 1.

Consequently, since Farris does not disclose or suggest this limitation of claim 1, by the Office Action’s admission and because Ochi does not disclose or suggest this limitation of claim 1 for reasons given above, all claim limitations of claim 1 are not disclosed or suggested by Farris and Ochi, taken individually or in any reasonable combination. In accordance with MPEP 2143, in order to establish a prima facie case of obviousness, (among other things) the prior art reference (or references when combined in a legally permissible way) must teach or suggest all the claim limitations. It is clear that the prior art references when combined do not teach all the claim limitations of claim 1. Accordingly a prima facie case of obviousness has not been established with respect to claim 1. In addition, any or all of the other cited references, Ehreth, Cardina, Sendrowicz, Aswada, McKenna and Patron, each cited for reasons unrelated to this deficiency of Ochi, do not cure this deficiency. Therefore, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

Furthermore, all claims that are dependent from claim 1, namely claims 3 and 5-9, are also allowable, at least for reasons based on their respective dependencies from allowable base claim 1.

Independent claim 10:

Independent claim 10 is rejected under 35 U.S.C. §103(a) as being un-patentable

over Cardina in view of Ochi and Sendrowicz. Claim 10 recites, *inter alia*:
“automatically establishing a connection to the network service provider over a wireless connection relayed from the network subscriber for which the wireline-connectivity to the network service provider over the wireline connection was established as normal connectivity via one or more other network subscribers when the wireline connection fails.”

On page 9 of the Office Action, the Examiner states that Cardina “does not particularly disclose wherein the connection to the network service provider is established over a wireless connection relayed via one or more other network subscribers [].” (underline emphasis in original, blank inserted) This is an incomplete statement because it ignores “when the wireline connection fails” which should have appeared in the blank. However, Applicant agrees with that statement as far as it goes. Further, Applicant re-aligns the record by stating that Cardina actually fails⁴ to disclose this complete limitation. Thereafter, the Office Action states: “Ochi teaches wherein a connection to a network is established over a wireless connection relayed via one or more other network subscribers.” and, by that statement, has again omitted, “when the wireline connection fails.” Curiously, in two prior office actions by the same Examiner that claim element was treated in its entirety.⁵ The Examiner then relies upon Ochi, Fig. 1 and paragraphs [0017], [0039] and [0040], the same information relied upon to reject claim 1,

⁴ In prior Office Actions dated 11/03/2006 (pg 8) and 05/04/2006 (pg 7) the Examiner stated far more strongly that “Cardina fails to disclose” (emphasis added) this complete limitation and Applicant continues to agree with that statement as well.

⁵ In prior Office Actions dated 11/03/2006 (pg 8) and 05/04/2006 (pg 7) the full limitation including “when the wireline connection fails” was addressed, but not so in the instant Office Action.

to allegedly teach this limitation, but it does not. Applicant disagrees for all of the reasons stated above with respect to claim 1.

Consequently, since Cardina does not disclose or suggest this limitation of claim 10, by the Office Action's admission and because Ochi does not disclose or suggest this limitation of claim 10 for reasons given above with respect to claim 1, all claim limitations of claim 10 are not disclosed or suggested by Cardina and Ochi, taken individually or in any reasonable combination. In accordance with MPEP 2143, in order to establish a prima facie case of obviousness, (among other things) the prior art reference (or references when combined in a legally permissible manner) must teach or suggest all the claim limitations. It is clear that the prior art references when combined do not teach all the claim limitations of claim 10. Accordingly a prima facie case of obviousness has not been established with respect to claim 10. In addition, any or all of the other cited references, Ehreth, Cardina, Sendrowicz, Aswada, McKenna and Patron, each cited for reasons unrelated to this deficiency of Ochi, do not cure this deficiency. Therefore, Applicant respectfully requests that the rejection of claim 10 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

Furthermore, all claims that are dependent from claim 10, namely claims 13-17 are also allowable, at least for reasons based on their respective dependencies from allowable base claim 10.

Independent claim 18:

Independent claim 18 is rejected under 35 U.S.C. §103(a) as being un-patentable

over Cardina in view of Ochi and Sendrowicz. Claim 18 recites, *inter alia*:

“providing wireline-connectivity as primary network connectivity to one of said network nodes over a wireline connection; and

providing backup network connectivity to said one node via a wireless network implemented over the remainder of the plurality of network nodes located at residences of subscribers of the network service provider, said backup network connectivity provided by relaying data from said one node having primary wireline-connectivity to the network service provider to a first node in the wireless network that has an active wireline connection to the network service provider.” (emphasis added)

On page 11 of the Office Action, the Examiner states that Cardina “does not particularly disclose wherein the wireless backup connectivity is implemented by relaying data to a first node in the wireless network that has an active [] connection to the network service provider.” (blank inserted) Applicant agrees that Cardina does not disclose this subject matter but notes, for the record, that the Office Action has again omitted “wireline” which should have been inserted in the blank.

Thereafter, the Office Action states: “Ochi teaches wherein a backup/wireless connectivity is implemented by relaying data to a node that has an active [] connection to a network” (blank inserted) which again ignores “wireline” and relies upon Ochi, Fig. 1 and paragraphs [0017], [0039] and [0040] to allegedly teach this limitation, but they do not for the following reasons. (This is the same information relied upon to reject claims 1 and 10.)

Claim 18 recites *inter alia* “providing wireline-connectivity as primary network connectivity to one of said network nodes over a wireline connection.” (emphasis added) Any attempt to read user node 102 in Ochi upon Applicant’s recited “one” node fails

because there is no wireline connection between Ochi's user node 102 and corresponding node 104.

Further, any attempt to read relay node 106 in Ochi upon Applicant's recited "one" node also fails because it thereby removes relay node 106 from possibly being alleged as equivalent to Applicant's recited "first node." Applicant's recited first node has an active wireline connection to the network service provider, and the only node in Ochi that has an active wireline connection to corresponding node 104, the alleged network service provider, is relay node 106. Therefore, selecting relay node 106 as Applicant's recited "one" node pre-empts relay node 106 from being viewed as Applicant's recited "first node" and there are no other possibilities in Ochi to allege as being equivalent to Applicant's recited "first node."

Furthermore, claim 18 also recites, *inter alia*: "...relaying data from said one node having primary wireline-connectivity to the network service provider to a first node in the wireless network that has an active wireline connection to the network service provider." Again, node 102, if attempted to be read upon Applicant's "one node," does not have primary wireline-connectivity to the network service provider nor does it have an active wireline connection to the network service provider; that attempted reading fails. However, Ochi's relay node 106 has an active wireline connection to the alleged network service provider (i.e., corresponding node 104). But, if relay node 106 is viewed as Applicant's recited "first node" leaving node 102 as an allegedly equivalent recited "one node" that attempted reading also fails. It fails because Applicant's recited "one node" has "primary wireline-connectivity to the network service provider" while node

102 does not have that wireline connectivity. Thus, regardless of interpretation amongst Ochi's disclosed components, Ochi does not read on these limitations of claim 18.

Consequently, since Cardina does not disclose or suggest this limitation of claim 18 by the Office Action's admission and because Ochi does not disclose or suggest this limitation of claim 18 for reasons given above, all claim limitations of claim 18 are not disclosed or suggested by Cardina and Ochi, taken individually or in any reasonable combination. Sendrowicz, cited merely to show ad hoc networks, is ineffective to cure this deficiency in Ochi. In accordance with MPEP 2143, in order to establish a prima facie case of obviousness, (among other things) the prior art reference (or references when combined in a legally permissible manner) must teach or suggest all the claim limitations. It is clear that the prior art references when combined do not teach all the claim limitations of claim 18. Accordingly a prima facie case of obviousness has not been established with respect to claim 18. In addition, any or all of the other cited references, Ehreth, Cardina, Sendrowicz, Aswada, McKenna and Patron, each cited for reasons unrelated to this deficiency of Ochi, do not cure this deficiency. Therefore, Applicant respectfully requests that the rejection of claim 18 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

Furthermore, all claims that are dependent from claim 18, namely claims 22-27 are also allowable, at least for reasons based on their respective dependencies from allowable base claim 18.

Independent claim 28:

Claim 28 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in

view of Ochi. Claim 28 has not been amended and recites, *inter alia*:

wherein the wireless transceiver is configured to relay data from other wireless transceivers in the other NIUs when connectivity on their respective wireline connections fails. (emphasis added)

On page 5 of the Office Action, the Examiner states that Farris “does not particularly disclose wherein the wireless transceiver is configured to communicate with other NIUs and to relay data from other wireless transceivers in the other NIUs when connectivity other [on their] respective [] connections to a network fails.” (blank inserted) Again, the Office Action has removed the important word “wireline” in its reading of the claim limitation which should have appeared in the space provided by the blank inserted above. Applicant agrees that Farris does not particularly disclose the limitation, even in the altered and incomplete form presented in the Office Action. Further, Applicant re-aligns the record by stating that Farris fails⁶ to disclose this limitation.

Thereafter, the Office Action states: “Ochi teaches a wireless transceiver configured to communication [communicate] with other wireless transceivers (i.e. NIUs) and to relay data from the other wireless transceivers when their respective [] connections to network fails” (blank inserted) and, by that statement, has again omitted “wireline” which should have appeared in the blank to modify “connections” in that limitation. More appropriately, in two prior office actions by the same Examiner that

⁶ In prior Office Actions dated 11/03/2006 (pg 15) and 05/04/2006 (pg 14) the Examiner stated far more strongly that “Farris fails to disclose” (emphasis added) this complete limitation, and Applicant continues to agree with that statement as well.

claim element was treated in its entirety.⁷ The Examiner then relies again upon Ochi, Fig. 1 and paragraphs [0017], [0039] and [0040] to allegedly teach this limitation, but they do not. Applicant disagrees because user node 102, appearing in Fig. 1 of Ochi and as described in these paragraphs and throughout Ochi, relies exclusively upon a wireless connection. In fact, the term “wireline” does not appear in Ochi. In other words, since the Office Action is apparently attempting to read user node 102 on Applicant’s recited NIU, the fact that Ochi’s user node 102 does not have any wireline network connection disqualifies node 102 as being equivalent to Applicant’s recited NIU.

Consequently, since Farris does not disclose or suggest this limitation of claim 28, by the Office Action’s admission and because Ochi does not disclose or suggest this limitation of claim 28 for reasons given above, all claim limitations of claim 28 are not disclosed or suggested by Farris and Ochi, taken individually or in any reasonable combination. In accordance with MPEP 2143, in order to establish a prima facie case of obviousness, (among other things) the prior art reference (or references when combined in a legally permissible manner) must teach or suggest all the claim limitations. It is clear that the prior art references when combined do not teach all the claim limitations of claim 28. Accordingly a prima facie case of obviousness has not been established with respect to claim 28. In addition, any or all of the other cited references, Ehreth, Cardina, Sendrowicz, Aswada, McKenna and Patron, each cited for reasons unrelated to this deficiency of Ochi, do not cure this deficiency. Therefore, Applicant respectfully requests that the rejection of claim 28 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

⁷ In prior Office Actions dated 11/03/2006 (pg 15) and 05/04/2006 (pg 14) the full limitation including

Furthermore, all claims that are dependent from claim 28, namely claims 29-32 are also allowable, at least for reasons based on their respective dependencies from allowable base claim 28.

All pending claims have been addressed hereinabove, and all have been shown to be allowable over the cited references. There may be additional reasons why the dependent claims are allowable over the cited references based on their individual recitations, and Applicant reserves its rights to argue for patentability of the dependent claims for these and other reasons.

In addition, in accordance with MPEP 2143 a *prima facie* case of obviousness can be refuted on the basis of any one of three criteria, and only one of those criteria is discussed herein. Applicant does not acquiesce in the rejections, and reserves its rights to argue for patentability of the claims herein based on any or all of these three criteria in subsequent responses.

CONCLUSION

Reconsideration and early allowance of the pending claims are respectfully requested based on the above amendments and remarks. It is respectfully submitted that all claims and, therefore, this application are in condition for allowance and prompt passage to issue is respectfully requested.

To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. Please charge any other fees due, or credit any overpayment made to that account.

Respectfully submitted,

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